

REMARKS

The Action maintains that the application contains claims directed to five patentably distinct inventions: Invention I (claims 1-20¹, 27-31, 35-37); Invention II (claims 32-34); Invention III (claims 21-24, 38-39, 46-48); Invention IV (claims 25-26², 41-45); and Invention V (claim 40). Applicants hereby elect Invention I for prosecution in this application. Applicants make this election with traverse, and without prejudice to the presentation of claims of Inventions II-V in later applications.

Applicants request reconsideration and withdrawal of the restriction requirement. The Action has failed to assert or demonstrate that Inventions I and III are patentably distinct. Moreover, such a showing is impossible because (1) the relationship between the floorcovering (Invention III) and the tiles (Invention I) is that of a combination-subcombination and (2) the claims to the floorcovering refer to the claims to the tiles, so that the Action is incapable of making the requisite showing of two-way distinctiveness pursuant to MPEP 806.05(c). Thus, the Inventions I and III are properly maintained in the same application.

Moreover, the Action has not met its burden of showing that Inventions IV and I are distinct. MPEP 806.05(f) requires a showing that "the process *as claimed* can be used to make other and different products." The Action maintains that the process (Invention IV) can be used to make products other than and materially different from tiles (Invention I), such as clothes, and thus Inventions I and IV are distinct. However, the analysis must focus on the process *as claimed*. Claims 41-45 all recite a method that includes the step of "forming carpet tiles." Thus, the process as claimed cannot be used to make other and materially different products because

¹ Applicants believe that the Action mistakenly included floorcovering claims 21-24 with the tile claims of Invention I.

² Claims 25 and 26 were withdrawn without prejudice in the *Amendment and Response to Office Action and Petition for Extension of Time*, filed on July 29, 2002, and thus are no longer pending in this application.

the claims of Invention IV explicitly recite forming carpet tiles. Thus, the Action has failed to demonstrate that Inventions IV and I are distinct. These Inventions are therefore properly maintained together in this application.

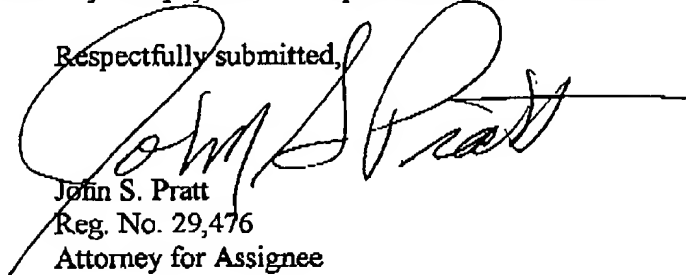
Similarly, the Action has also failed to demonstrate that Inventions V and III are distinct. Claim 40 recites "forming carpet tiles" and thus the method *as claimed* cannot be used to make other and materially different products, such as the linoleum tiles suggested by the Action. Thus, the Action has failed to demonstrate that Inventions V and III are distinct and therefore these Inventions are properly maintained together in this application.

Moreover, the subject matter of claim 32, directed to a web, has been explicitly incorporated into claim 35, directed to carpet tiles. In order to properly examine claim 35, the Examiner will have to search the recited web. Examination of elected Invention I will necessarily require the same field of search necessary for examination of Invention II. The presence of both inventions in a single application therefore imposes no undue burden on the Examiner. More specifically, in order to properly search and examine claim 35, the Examiner must search in the carpet art for carpet webs having features recited in both claims 32 and 35. The presence of claims 32-34, directed to a carpet web, thus imposes no undue burden on examination, and restriction for examination purposes is improper. Because applicants have shown that restriction of any of the inventions is improper, withdrawal of the requirement and examination of all of the claims on the merits is respectfully requested.

This Amendment and Response elects Invention I (claims 1-20, 27-31, and 35-37), amends claims 1, 5, 21-24, 35, 38, 41, and 46-48, and cancels claim 31 without prejudice. With this amendment, claims 1-24, 27-30, and 32-48 are currently pending in the application. No fees

are believed due for these amendments and additions; however, the Commissioner is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account 11-0855.

Respectfully submitted,



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Marked-up copy of amended claims pursuant to 37 C.F.R. § 1.121(c)

1. (Twice Amended) Carpet tiles comprising textile faces that exhibit orthogonal ambiguity without pattern alignment between adjacent tiles.

5. (Twice Amended) [Orthogonally ambiguous] The carpet tiles of claim 1, wherein each tile has a pattern comprising a background color and a first color different from the background color.

21. (Amended) Floorcovering comprising at least two [orthogonally ambiguous] carpet tiles of claim 1 positioned side-by-side.

22. (Amended) Floorcovering comprising at least two [orthogonally ambiguous] carpet tiles of claim 1 positioned side-by-side wherein each tile comprises a pattern formed by a background color and at least two colors different from the background color, wherein the background color and at least one of the at least two colors different from the background color are the same for the at least two orthogonally ambiguous carpet tiles.

23. (Twice Amended) The floorcovering of claim 22, wherein the pattern on each of the at least two [orthogonally ambiguous] carpet tiles comprises shapes, at least one shape on each of the at least two orthogonally ambiguous carpet tiles having a straight side.

24. (Twice Amended) The floorcovering of claim 23, wherein adjacent shapes on each of the at least two [orthogonally ambiguous] carpet tiles comprise at least one common color.

35. (Amended) [A carpet] Carpet tiles cut from [the] a carpet web [of claim 32], wherein the carpet web has a width and a length and comprises a textile face having a pattern comprising a plurality of shapes formed by a plurality of colors, wherein at least some adjacent shapes on the web comprise a common color and none of the shapes extends the full length or width of the web, wherein the carpet tiles cut from the web all comprise a common color and at least a portion of at least some of the plurality of shapes appear on each carpet tile cut from the web, each of which shapes having an edge that parallels at least one edge of the carpet tile on which it appears.

38. (Amended) Floorcovering comprising a plurality of carpet tiles [cut from the web] of claim [32] 35 [and] positioned on a flooring surface.

41. (Amended) A method of producing the carpet tiles of claim 1 comprising forming carpet tiles having an orthogonally ambiguous pattern that does not require pattern alignment between adjacent tiles.

46. (Amended) An assembly of carpet tiles of claim 1 having an appearance of continuity in which no tile looks out of place, each of the tiles having a textile face comprising means for rendering the position and orientation of the tiles irrelevant to the appearance of continuity across the assembly of tiles.

47. (Amended) An assembly of side-by-side carpet tiles of claim 1, each of which tiles has a textile face comprising a pattern not identical to any other tile of the assembly, the patterns

having shapes and colors rendering the appearance of the tiles continuous across the assembly so that no tile looks out of place or out of position in any place or position in the assembly.

48. (Amended) An assembly of carpet tiles of claim 1 presenting a continuous appearance, wherein each tile is rotationally oriented in the assembly and wherein the rotational orientation of at least one tile may be altered without disrupting the appearance of continuity.